# APPENDIX

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## APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**No. 09-5757**

**[Filed May 13, 2010]**

| | |
|---|---|
| TRUDY GRIFFIN, | ) |
| | ) |
| *Plaintiff-Appellant,* | ) |
| | ) |
| *v.* | ) |
| | ) |
| DARRELL HARDRICK, | ) |
| | ) |
| *Defendant-Appellee.* | ) |
| | ) |

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 08-00828—Aleta Arthur Trauger, District Judge.

Argued: March 10, 2010

Decided and Filed: May 13, 2010

Before: COLE, GILMAN, and
WHITE, Circuit Judges.

## COUNSEL

**ARGUED:** Phillip L. Davidson, LAW OFFICES, Nashville, Tennessee, for Appellant. Keli J. Oliver, METROPOLITAN NASHVILLE DEPARTMENT OF LAW, Nashville, Tennessee, for Appellee. **ON BRIEF:** Phillip L. Davidson, LAW OFFICES, Nashville, Tennessee, for Appellant. Keli J. Oliver, METROPOLITAN NASHVILLE DEPARTMENT OF LAW, Nashville, Tennessee, for Appellee.

GILMAN, J., delivered the opinion of the court, in which COLE, J., joined. WHITE, J. (pp. 11-13), delivered a separate dissenting opinion.

## OPINION

RONALD LEE GILMAN, Circuit Judge. Trudy Griffin was brought to the Davidson County Criminal Justice Center after she was arrested for disorderly conduct. When Griffin created a disturbance while speaking with a nurse at the Center, two corrections officers, Darrell Hardrick and Pamela Rutledge, each took one of her arms and attempted to guide Griffin away from the nurse's station. Griffin at that point began struggling with the officers, causing Hardrick to perform a "leg-sweep maneuver" to bring Griffin to the floor so that she could be handcuffed and taken back to her holding cell. As Griffin fell to the floor, however, Rutledge tumbled with her. Rutledge accidentally landed on one of Griffin's legs, breaking Griffin's tibia.

Griffin sued Hardrick over the incident, alleging an excessive-force claim under 42 U.S.C. § 1983 as well as a state-law claim for battery. The district court granted Hardrick's motion for summary judgment,

holding that no reasonable jury could find that Hardrick had intended the unnecessary and wanton infliction of pain when he tripped Griffin. For the reasons set forth below, we **AFFIRM** the judgment of the district court.

## I. BACKGROUND

### A. Factual background

Griffin was arrested on August 20, 2005 for disorderly conduct and resisting arrest. She was transported to the Davidson County Criminal Justice Center (Center) for booking. While she was in a holding cell at the Center, Griffin asked permission to go to the nurse's station. After permission was granted, she walked down the hall to speak with a nurse about bruises on her back and arms. Griffin repeatedly demanded that she be transported to a local hospital so that she could be treated for these injuries. When the nurse told Griffin that she would not be taken to a hospital, Griffin refused to take "no" for an answer and began raising her voice with the nurse. At this point, Hardrick, a corrections officer with the Davidson County Sheriff's Office who was in charge of the booking area, approached Griffin.

Both parties agree that "Hardrick observed [Griffin] acting in a non-compliant manner with regard to the instructions she received from the nurse," and that Griffin "walked away from Hardrick when he attempted to speak with her about the situation." Griffin claims that as she walked away, Hardrick threatened her by saying that "she was going to live in his hell" and that she "was his bitch." Hardrick then took hold of one of Griffin's arms, but Griffin

attempted to pull away. Griffin claims that she told Hardrick to "watch her arms" because they were sore from being bruised earlier.

At that point, Hardrick asked Rutledge, another corrections officer at the Center, to assist with the situation. When Rutledge reached for Griffin's other arm, Griffin pulled her arm away (although she contends that she pulled away only "a little bit"). Hardrick and Rutledge then began leading Griffin down the hall toward her holding cell. Griffin claims that she was not struggling, resisting, or acting aggressively. She asserts that Hardrick nevertheless suddenly tripped her, causing her to fall to the floor. This in turn caused Rutledge to accidentally fall on top of her, which fractured Griffin's tibia.

Hardrick, on the other hand, contends that Griffin was jerking and attempting to get away. This prompted him to perform a "leg-sweep maneuver," typically used by officers to bring a noncompliant individual to the ground with the least amount of force necessary. He does not dispute, however, that Rutledge accidentally fell on Griffin's leg as a result of the leg sweep. After Griffin was handcuffed on the ground, other Center employees carried her into the holding-cell area. An ambulance was then called to the Center for the purpose of taking Griffin to the hospital, where she required surgery, eight screws, and a metal plate to fix her broken tibia.

A security camera caught the incident on videotape. The video establishes that Griffin approached the nurse's station and remained there for just under 10 minutes, alternating between standing at the window and sitting in a chair placed by the station. She can be

seen motioning and waiving her arms at various points throughout her conversation with the nurse. Hardrick walked toward Griffin and spoke with her for approximately 20 seconds before Rutledge approached the nurse's station and stood a few feet away from Hardrick and Griffin.

After another 10 seconds, Griffin began to walk away from Hardrick, who then reached out to take her right arm. Griffin attempted to jerk her arm away, but Hardrick maintained his grip, and Rutledge stepped in to take Griffin's left arm. After a second or two of struggling with Griffin outside the nurse's station, Hardrick and Rutledge began to escort her down the hallway, which she resisted. Hardrick then stuck out his leg to trip Griffin. At this point, Griffin fell to the floor, and Rutledge tumbled on top of her.

**B. Procedural history**

In May 2006, Griffin filed a lawsuit in a Tennessee state court against Hardrick and the Metropolitan Government of Nashville and Davidson County (Metro), alleging a claim of battery under the Tennessee Governmental Tort Liability Act. *See* Tenn. Code Ann. §§ 29-20-101 to -408. Griffin later dismissed her claim against Metro, but added an excessive-force claim against Hardrick pursuant to 42 U.S.C. § 1983. Section 1983 provides a cause of action against those who violate a person's constitutional rights while acting under color of state law. This caused Hardrick to timely remove the case to the United States District Court for the Middle District of Tennessee.

Hardrick subsequently moved for summary judgment. In response to Griffin's § 1983 claim, he

argued that not only was he entitled to qualified immunity, but that Griffin's claim could not succeed on the merits because Hardrick's use of force did not constitute the wanton infliction of pain. Hardrick further contended that he used only the amount of force necessary to subdue Griffin, so that her battery claim was likewise without merit.

The district court granted Hardrick's motion for summary judgment in June 2009. Because the court concluded that no reasonable jury could find that Hardrick's conduct constituted the wanton infliction of pain, it did not address Hardrick's qualified-immunity argument. The court also decided that where the identical use of force leads to both a § 1983 claim and a state-law battery claim, the same standard applies to both causes of action. It therefore granted summary judgment to Hardrick on Griffin's state-law battery claim as well. Griffin has timely appealed.

## II. ANALYSIS

### A. Standard of review

We review de novo a district court's grant of summary judgment. *ACLU of Ky. v. Grayson County*, 591 F.3d 837, 843 (6th Cir. 2010). Summary judgment is proper where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c)(2). In considering a motion for summary judgment, the district court must draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The central issue is "whether the evidence presents a sufficient disagreement to require submission to a jury

or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986).

**B. Griffin's § 1983 claim**

Section 1983 prohibits a person "acting under color of state law" from depriving an individual "of a right secured by the Federal Constitution or laws of the United States." *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992). Griffin's complaint alleged that Hardrick violated § 1983 by using excessive force against her in violation of the *Fourth* Amendment. The district court, however, interpreted her claim as alleging a violation of the *Fourteenth* Amendment, and Griffin does not dispute this characterization on appeal.

Prisoners are protected from the use of excessive force by the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312, 327 (1986). As a pretrial detainee, however, Griffin's rights stem from the Due Process Clause of the Fourteenth Amendment, which "protects a pretrial detainee from the use of excessive force that amounts to punishment." *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). The law is unsettled as to whether the analysis for a Fourteenth Amendment excessive-force claim and an Eighth Amendment excessive-force claim is the same. *See Leary v. Livingston County*, 528 F.3d 438, 443 (6th Cir. 2008) ("[T]here is room for debate over whether the Due Process Clause grants pretrial detainees more protections than the Eighth Amendment does . . . ."). *Compare Orem v. Rephann*, 523 F.3d 442, 446 (4th Cir. 2008) (applying the Eighth Amendment standard to a pretrial detainee's excessive-force claim under the Fourteenth

Amendment), *with Wilson v. Williams*, 83 F.3d 870, 875 (7th Cir. 1996) ("Since [the protection of the Fourteenth Amendment] extends beyond the prohibition of merely 'cruel and unusual' punishment, pretrial detainees must arguably be afforded a higher standard than that provided by the Eighth Amendment.").

In the instant case, however, both parties and the district court relied on this court's unpublished decision in *Watkins v. Evans*, Nos. 95-4162, 95-4341, 1996 WL 499094, at *2 (6th Cir. Sept. 3, 1996), which held that the standards are the same. Because Griffin does not seek to invoke the potentially broader protections of the Fourteenth Amendment, we will analyze her claim under the Eighth Amendment standard. *See Lewis v. Downey*, 581 F.3d 467, 475 (7th Cir. 2009) (analyzing a pretrial detainee's excessive-force claim under the same standard as an Eighth Amendment excessive-force claim where the detainee did not seek to invoke "any safeguards the Fourteenth Amendment provides beyond those it shares with the Eighth Amendment").

The test for whether the use of force violates the Eighth Amendment requires a court to determine if the defendant's conduct caused the "unnecessary and wanton infliction of pain." *Moore v. Holbrook*, 2 F.3d 697, 700 (6th Cir. 1993) (citation omitted). In other words,

> [t]o ascertain whether excessive force was used under the Eighth Amendment, the court must determine whether the force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to

> cause harm. Such a claim has both an objective and a subjective component. The objective component requires that the pain be serious. The subjective component requires that the offending, non-penal conduct be wanton.

*Watkins*, 1996 WL 499094, at *2 (citations omitted).

Hardrick does not dispute that Griffin suffered serious pain, so the objective element is satisfied. We must therefore determine if a genuine issue exists as to whether Hardrick's conduct in using the leg-sweep maneuver on Griffin was "applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *See id.*

As an initial matter, Griffin argues that the district court erred in considering the videotape when ruling on Hardrick's motion for summary judgment. The Supreme Court, however, has held that a court may properly consider videotape evidence at the summary judgment stage. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (holding that, based on videotape evidence, a police officer did not use excessive force in ramming a fleeing suspect's car). Moreover, the reasonableness of a defendant's actions is an appropriate matter to determine on summary judgment. *Dunn v. Matatall*, 549 F.3d 348, 353 (6th Cir. 2008) (explaining that *Scott* "instructs us to determine as a matter of law whether the events depicted on [a] video, taken in the light most favorable to [the nonmoving party], show that the

Officers' conduct was objectively reasonable"). The district court thus properly considered the videotape evidence in determining whether Hardrick's actions were wanton.

Turning now to whether Hardrick's use of force was excessive, this court has previously cautioned that an official's decision to use force is entitled to deference:

> [O]fficials confronted with a prison disturbance must balance the threat [that] unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force. Because prison officials must make their decisions in haste, under pressure, and frequently without the luxury of a second chance, we must grant them wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.

*Combs v. Wilkinson*, 315 F.3d 548, 557 (6th Cir. 2002) (first alteration in original) (citations and internal quotation marks omitted). The issue is therefore not whether the use of force was absolutely necessary in hindsight, but "whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Whitley*, 475 U.S. at 321.

Griffin does not dispute that she was acting in a noncompliant manner toward the nurse, that she walked away from Hardrick while he was speaking with her, and that she attempted to jerk her arm away

from Hardrick. As is evident from the video, Hardrick was calm and nonaggressive during his initial conversation with Griffin. He stood at least a foot away from Griffin and spoke with her for about 30 seconds before ever touching her. Most importantly, the video establishes that Griffin was clearly struggling against both Hardrick and Rutledge before Hardrick employed the leg-sweep maneuver.

The fact that Griffin had been engaged in a loud, lengthy, and animated conversation with the nurse gave Hardrick a reasonable basis to believe that force would be necessary to control Griffin. Similarly, Griffin was struggling against Hardrick and Rutledge as they attempted to lead her away from the nurse's station, giving Hardrick a plausible reason to believe that force was necessary to bring Griffin to the floor so that she could be handcuffed and taken back to her holding cell. Hardrick's initial calm demeanor with Griffin suggests that he was not seeking to wantonly inflict pain on her, but was attempting to bring her under control.

Griffin does not dispute that Hardrick was in compliance with all relevant Center policies on the use of force, and she does not dispute Hardrick's contention that he was acting according to his training when employing the leg-sweep maneuver. Indeed, to counter the fact that Hardrick was responding to the situation as trained, Griffin argues only that the opinion of the subject-control instructor for the Davidson County Sheriff's Office—that the leg-sweep maneuver was proper under the circumstances—was *based on the video*, which testimony she claims would invade the province of the jury and should therefore have been excluded from consideration on summary judgment.

But as discussed above, a court may properly consider videotape evidence at the summary-judgment stage, *Scott*, 550 U.S. at 380-81, so an expert opinion based on such evidence is appropriate, *see* Fed. R. Evid. 702; *Brainard v. Am. Skandia Life Assurance Corp.*, 432 F.3d 655, 663 (6th Cir. 2005) (holding that an expert opinion is permitted at the summary judgment stage so long as the opinion is not "a conclusory assertion about ultimate legal issues" (citation omitted)). The fact that Hardrick was acting according to established procedures suggests that he had not undertaken the leg-sweep maneuver in a wanton manner, but was acting as he was trained while attempting to gain control of Griffin. Moreover, there is no basis whatsoever to infer that Hardrick intended to use such force as would break Griffin's leg. The force that did so came solely from the unfortunate accident of Rutledge collapsing on Griffin as they both fell to the floor. These circumstances do not support a § 1983 claim for the wanton infliction of pain on the part of Hardrick.

In response to the adverse ruling by the district court, Griffin argues that she presented several genuine issues of material fact sufficient to defeat Hardrick's motion for summary judgment. Griffin, for example, contends that "Hardrick never denied that Griffin received injuries to her arms before coming into the [Center]," and that he "never denied that he made threats towards Griffin that 'she was going to live in his hell' and that she 'was his bitch.'" But these alleged threats do not create a genuine issue of *material* fact under the particular circumstances here because the videotape shows that Griffin was still struggling with the officers at the time Hardrick employed the leg-sweep maneuver. So at that moment, Hardrick had a

reasonable basis to believe that further force was necessary to control Griffin, even if he had earlier made the alleged generalized threats against her.

Griffin next argues that she was walking away because she was scared of Hardrick and wanted to return to her holding cell, thus creating a genuine issue of material fact. But this allegation is not material even if it is true (which seems doubtful given Hardrick's calm demeanor as shown on the videotape when he initially interacted with Griffin). Whether or not she felt that she had a good reason for walking away, Griffin was still noncompliant with the nurse and was resisting Hardrick and Rutledge before Hardrick used the leg-sweep maneuver. Moreover, Griffin has never contended that she communicated her alleged motivation to Hardrick, so her reason for noncompliance is irrelevant as to whether Hardrick reasonably thought that force was necessary to bring Griffin under control.

Other issues cited by Griffin are clearly contradicted by the record. She claims that Hardrick tripped her without provocation and that at no time did she resist either Hardrick or Rutledge. To the contrary, the video clearly shows Griffin resisting the officers' efforts to lead her down the hallway and her efforts to break away from them.

The district court thus did not err in granting Hardrick's motion for summary judgment on Griffin's § 1983 excessive-force claim. Although we consider this to be a close case, we ultimately conclude that no reasonable jury could find that Hardrick "evinced such wantonness . . . as is tantamount to a knowing willingness" that Griffin's injury occur. *See Whitley v.*

*Abers*, 475 U.S. 312, 321 (1986). We therefore need not decide the merits of Hardrick's argument that he is entitled to qualified immunity.

**C. Griffin's state-law battery claim**

In addition to her § 1983 claim, Griffin alleged a state-law battery claim against Hardrick. Griffin brought this claim under the Tennessee Governmental Tort Liability Act, which permits individuals to bring a cause of action against governmental employees who allegedly commit intentional torts. *See Baines v. Wilson County*, 86 S.W.3d 575, 583 n.5 (Tenn. Ct. App. 2002). Griffin's appellate brief, however, does not mention her battery claim. Indeed, her Statement of the Case references only an excessive-force violation against Hardrick pursuant to § 1983. Nor was her battery claim mentioned at oral argument. She has therefore likely abandoned this claim on appeal. *See Marks v. Newcourt Credit Group, Inc.*, 342 F.3d 444, 462 (6th Cir. 2003) ("An appellant waives an issue when he fails to present it in his initial briefs before this court."). *But see Madden v. Chattanooga City Wide Serv. Dep't*, 549 F.3d 666, 673 (6th Cir. 2008) (holding that where the same analysis applies to a plaintiff's federal and state-law causes of action, a defendant does not waive its defense to the state-law claim by failing to present the state-law claim on appeal if it argued the federal claim).

But even if Griffin has not abandoned this claim, it fails on the merits. Where a plaintiff asserts a battery claim under Tennessee law that arises out of the same use of force as her § 1983 excessive-force claim, the analysis is the same for both causes of action. That is, "whether the analysis concerns whether an officer

violated a plaintiff's constitutional rights by using excessive force or whether the analysis concerns whether an officer committed state-law battery by using force that was 'clearly excessive,' the same principles . . . are applied." *Lee v. Metro. Gov't of Nashville & Davidson County*, 596 F. Supp. 2d 1101, 1118 (M.D. Tenn. 2009) (holding that officers entitled to summary judgment on a § 1983 excessive-force claim were automatically entitled to summary judgment on the Tennessee common-law battery claim); *see also Harris v. Metro. Gov't of Nashville*, No. 3:06-0868, 2007 WL 4481176, at *9 (M.D. Tenn. Dec. 18, 2007) ("[T]he plaintiff has set forth adequate grounds for his [§ 1983] claim of excessive force against each of the officers. Because Tennessee courts apply the same 'excessive force' principles to assault and battery claims against police officers, the plaintiff has additionally set forth adequate grounds against each of the officers for assault and battery under Tennessee law."). We thus find no error in the district court's conclusion that because Hardrick was entitled to summary judgment on Griffin's § 1983 claim, he was also entitled to summary judgment on her state-law battery claim.

## III. CONCLUSION

For all of the reasons set forth above, we **AFFIRM** the judgment of the district court.

## DISSENT

HELENE N. WHITE, Circuit Judge (dissenting). I respectfully dissent. I agree that it is appropriate for the court to consider a video of the events when ruling on a motion for summary judgment, and to discount any allegations clearly rebutted by the video. I do not, however, agree that the video in this case clearly undermines Griffin's account leaving no genuine issue of material fact. I would reverse and remand for further proceedings.

In my view, the videotape does not "blatantly contradict[]" Griffin's version of the facts "so that no reasonable jury could believe" her, and therefore summary judgment was not appropriate. *Scott v. Harris*, 550 U.S. 372, 380-81 (2007). Under *Scott*, in determining whether there are material factual disputes, we must accept the facts as depicted in the video, even when contrary to a party's sworn testimony. However, facts that are not clearly portrayed in the video remain entitled to an interpretation most favorable to the non-moving party. *Morales v. American Honda Motor Co., Inc.*, 71 F.3d 531, 535 (6th Cir. 1995); *see Scott*, 550 U.S. at 380 (facts must be viewed in a light most favorable to non-moving party when there is a "genuine dispute as to those facts"). Accepting all events portrayed in the video as true, there remains a material factual dispute as to whether Hardrick performed the takedown maneuver maliciously and sadistically to cause harm, rather than "in a good-faith effort to maintain or

restore discipline." *Hudson v. McMillian*, 503 U.S. 1, 6 (1992).

In *Scott*, the Court found that the plaintiff's claim that he was driving in a "cautious and controlled" fashion was clearly rebutted by the video that showed him traveling upwards of 85 miles per hour on narrow roads, swerving around cars, crossing the double-yellow line, forcing other cars traveling in both directions to the side of the road, running multiple red lights, and driving in the left-turn-only lane. *Id.* at 379-80. The video here, however, does not definitively establish either what transpired prior to Hardrick executing the takedown maneuver, or that Hardrick did not act maliciously or wantonly in executing the maneuver.

Griffin contends that Hardrick told her "she was going to live in hell" and that she "was his bitch." The video, which has no accompanying audio, does not contradict this allegation. The district court's perception of the "calmness" of Hardrick's demeanor is not incompatible with his having made these statements to Griffin, and thus, at this point in the litigation, we should assume he did. As the district court recognized, such statements "could indicate a 'sadistic' or 'malicious' state of mind at the time of the physical encounter." *See Wilson v. Seiter*, 501 U.S. 294, 302 (1991).

The majority concludes that "[m]ost importantly, the video establishes that Griffin was clearly struggling against both Hardrick and Rutledge before Hardrick employed the leg-sweep maneuver." I do not agree that the video shows that Griffin was struggling with the officers to an extent that no reasonable juror

could conclude that Hardrick acted wantonly and maliciously in performing the takedown. The video does show that Griffin began walking away from Hardrick, and that she resisted his initial attempt to grab her arm. Griffin, however, contends that she did so because her arms were already sore and bruised, and that Hardrick's grip caused her additional pain. Indeed, Hardrick concedes that Griffin told him to "watch [her] arms."

The video is ambiguous, however, as to whether Griffin was continuing to struggle at the time of the takedown and, even if she was, whether Hardrick could plausibly have thought a takedown necessary under the circumstances. In the approximately eight second span from when Rutledge took hold of Griffin's other arm until Hardrick performed the takedown maneuver, Griffin can be seen continuing to talk with the two officers with no aggressive physical movement. Hardrick and Rutledge then pull her forward forcefully, sufficient to make her stumble. It appears that Griffin has almost regained her balance when Hardrick performs the takedown, and she continues to be restrained at both arms by the officers. Further, no other inmates were in the area, and a third corrections officer stood nearby observing and ready to intervene. *See Seiter*, 501 U.S. at 303 (whether conduct "can be characterized as 'wanton' depends upon the constraints facing the *official*") (emphasis in original).

To be sure, prison officials are entitled to "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order." *Whitley v. Albers*, 475 U.S. 312, 321-22 (1986). But such deference "does not insulate from review actions taken in bad faith and

for no legitimate purpose." *Id.* at 322. A jury viewing the events portrayed in the video in light of the statements Griffin attributes to Hardrick could reasonably conclude that Hardrick could not plausibly have thought that the use of the takedown maneuver, although executed properly, was necessary, and that, in fact, he performed it solely to inflict pain, even if not of the degree that ultimately occurred.

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

**No. 09-5757**

**[Filed May 13, 2010]**

| | |
|---|---|
| TRUDY GRIFFIN, Plaintiff-Appellant, | ) |
| v. | ) |
| DARRELL HARDRICK, Defendant-Appellee. | ) |

Before: COLE, GILMAN, and WHITE, Circuit Judges.

**JUDGMENT**

On Appeal from the United States District Court for the Middle District of Tennessee at Nashville.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

**ENTERED BY ORDER OF THE COURT**

/s/Leonard Green
Leonard Green, Clerk

## APPENDIX B

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION**

**Case No.: 3:08-CV-828**

**[Filed June 3, 2009]**

| | |
|---|---|
| TRUDY GRIFFIN, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| DARRELL HARDRICK, | ) |
| | ) |
| Defendant. | ) |
| | ) |

Judge Trauger

**MEMORANDUM**

Pending before the court is the defendant's Motion for Summary Judgment (Docket No. 11), to which the plaintiff has responded (Docket No. 21), and the defendant has replied (Docket No. 30). For the reasons described herein, the defendant's motion will be granted.

## BACKGROUND

This case arises out of an incident that occurred when the plaintiff, Trudy Griffin, was detained at the Davidson County Criminal Justice Center ("DCCJC") on August 20, 2005.[1]

Earlier that day, Griffin had accompanied her son while he picked up his children at the children's maternal grandmother's house. (Docket No. 11 Ex. 2 at 4.) The plaintiff's son's exwife, Chrystal Griffin, had previously obtained a restraining order against the plaintiff's son, and, when the plaintiff and her son arrived at the house, Chrystal Griffin called the police to report a violation of the restraining order. (*Id.* at 4-5.)

Once the police officers arrived at the scene, the plaintiff attempted to tell the officers that Chrystal Griffin was not supposed to "be around [that] house." (Docket No. 11 Ex. 2 at 6.) The officers informed the plaintiff that they did not want to discuss the matter with her, but the plaintiff continued to vigorously explain her version of the situation to the officers. (*Id.* at 7.) Unable to obtain cooperation from the plaintiff,

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[1] Unless otherwise noted, the facts are drawn from the Plaintiff's Reply to Defendant's Statement of Undisputed Material Facts (Docket No. 24), the Defendant's Responses to Plaintiff's Statement of Material Facts in Dispute (Docket No. 29), and related affidavits and exhibits. Although the facts are drawn from submissions made by both parties, on a motion for summary judgment, all inferences are drawn in the light most favorable to the non-moving party. *See Matushita Elec. Indus. Co. V. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000).

the officers placed the plaintiff under arrest, but she put up some resistance and told the police officers that she was not going to jail. (*Id.* at 7-8.) In order to control the plaintiff and to enable the officers to put the plaintiff's arms in handcuffs, the officers pinched the plaintiff's arms. (*Id.* at 8.) After the officers were able to get the plaintiff in the police car, she slid around the back seat and continued doing so during the transport from the house to the DCCJC. Apparently during this time, the plaintiff sustained bruising to her arms and back.[2] (*Id.* at 8-9.) The plaintiff arrived at the DCCJC without additional incident, was booked, and was placed into a cell.

While in a cell at the DCCJC, Griffin asked the officers on staff if she could go to the nurses' station for treatment of her arm bruises. The officers granted the request, opened the cell door, and Griffin walked down the hall to talk to the nurse. At the nurses' station, Griffin complained to the nurse about her back and arms, and she demanded to be transported to a hospital. The nurse informed Griffin that this was not possible, but Griffin continued to talk to the nurse for several minutes about her bruising, speaking in a raised voice. (Docket No. 11 Ex. 2 at 15.)

The defendant, officer Darrell Hardrick of the Davidson County Sheriff's Office, was on duty at the DCCJC as the sergeant overseeing the booking area. Hardrick observed Griffin acting in a non-compliant manner toward the nurse. He approached Griffin,

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[2] When Griffin was initially booked, the nurse at the DCCJC discovered red welts on Griffin's back and bruises on Griffin's arms from the arrest. (Docket No. 27 at 1.)

Griffin claims, threatening her. Specifically, Griffin testified in her deposition that Hardrick told Griffin that she was "going to live in his hell" and that she "was his bitch." (Docket No. 11 Ex. 2 at 17.) While the defendant does not specifically deny that threats were made, there is a video of the incident, and the video, which has no sound, does not depict actions consistent with such hostility.[3] (Docket No. 11 Ex. 5 at 15:08:45-15:09:01.) Rather, during their discussion, Hardrick stood still in front of Griffin with his hands to his sides, while Griffin forcefully pointed at Hardrick and generally acted in an aggressive and defiant manner. (*Id.*)

The video shows that, after this brief discussion, Griffin attempted to walk away from Hardrick and the nurses' station. (Docket No. 11 Ex. 5 at 15:09:01.) Griffin claims that she did this because she was scared by the threats Hardrick had made and because she wanted to return to her nearby holding cell. (Docket No. 11 Ex. 2 at 16.) The video shows that, as Griffin attempts to walk away from Hardrick, Hardrick takes hold of Griffin's right arm. (Docket No. 11 Ex. 5 at 15:09:10.) The parties agree that, when Hardrick first

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[3] While, as noted above, a motion for summary judgment typically requires the court to view all facts in the light most favorable to the nonmoving party, the existence of a video depicting the incident can alter this standard. A video that contains clear and relevant information about an incident should be used and relied upon by the court, even when contradicting the facts stated by the nonmoving party. *See Scott v. Harris*, 550 U.S. 372, 380 (2007). This case contains video footage of the incident from security cameras at the Davidson County Criminal Justice Center. (*See* Docket No. 11 Ex. 5.) Thus, this video will be relied upon for facts relevant to the matter before the court.

took hold of Griffin's arm, she tried to pull her arm away, telling him to "watch her [bruised] arms." (Docket No. 24 at ¶ 7.) As Hardrick continued to hold onto Griffin's right arm, Griffin forcibly resisted, using her left arm to push away from him. (Docket No. 11 Ex. 5 at 15:09:13.) Another officer, Sergeant Pamela Rutledge, appeared on the scene and grabbed Griffin's left arm. (Docket No. 11 Ex. 3 at 4; Docket No. 11 Ex. 5 at 15:08:52; 15:09:13.) At this point, with one officer on each side of Griffin, a general fracas ensued, in which Griffin thrashed her arms, attempting to pull and push away from the officers' grasps. (*Id.* at 15:09:13-15:09:20.)

As Griffin continued to forcefully jerk her arms in an attempt to break free from the officers' grasps, Hardrick attempted to bring Griffin under control by tripping her. (Docket No. 11 Ex. 5 at 15:09:19-15:09:23.) His first attempt failed, but his second was successful, and Griffin fell to the ground. (*Id.* at 15:09:20-15:09:23.) Rutledge, apparently accidentally, fell onto Griffin's leg, breaking Griffin's tibia. (*Id* at 15:09:24; Docket No. 24 at ¶ 12.)

After falling onto the floor, Griffin complained that her leg was broken, but a DCCJC employee [not a defendant] told Griffin "her leg wasn't broke," and proceeded to drag Griffin to another holding cell area. Firefighters were called, and they wrapped Griffin's leg and brought her to Meharry Medical Center. (Docket No. 11 Ex. 2 at 22.) Griffin's broken tibia required a surgery that used eight screws and a plate to piece her leg back together. (*Id.* at 24.)

Griffin filed this lawsuit originally in the First Circuit Court for Davidson County, Tennessee,

claiming that Hardrick tripped her gratuitously. (Docket No. 1 at 1.) Defendant Hardrick removed the suit to this court, and has now moved for summary judgment. (*Id.*; Docket No.11.)

## ANALYSIS

The plaintiff brought this suit under 42 U.S.C. § 1983, alleging that the defendant's actions violated her rights under the Fourth Amendment to the Constitution. Subsequent briefing has made it clear, however, that, because the incident occurred while the plaintiff was a pretrial detainee, the plaintiff's claim is actually a Section 1983 claim that asserts rights under the Fourteenth Amendment. (*See* Docket No. 11 at 2; Docket No. 22 at 3.) In addition to her constitutional claim, the plaintiff also alleges a battery claim arising under Tennessee state law.

### I. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). To prevail, the moving party must meet the burden of proving the absence of a genuine issue of material fact as to an essential element of the opposing party's claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Logan v. Denny's, Inc.*, 259 F.3d 558, 566 (6th Cir. 2001).

In determining whether the moving party has met its burden, the court must view the factual evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). "'The court's function is not to weigh the evidence and determine the truth of the matters asserted, 'but to determine whether there is a genuine issue for trial.'" *Little Caesar Enters., Inc. v. OPPCO, LLC*, 219 F.3d 547, 551 (6th Cir. 2000) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

If the nonmoving party fails to make a sufficient showing on an essential element of the case with respect to which she has the burden, however, the moving party is entitled to summary judgment as a matter of law. *See Williams v. Ford Motor Co.*, 187 F.3d 533, 537-38 (6th Cir. 1999). To preclude summary judgment, the nonmoving party "must go beyond the pleadings and come forward with specific facts to demonstrate that there is a genuine issue for trial." *Chao v. Hall Holding Co., Inc.*, 285 F.3d 415, 424 (6th Cir. 2002). "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party]." *Shah v. Racetrac Petroleum Co.*, 338 F.3d 557, 566 (6th Cir. 2003) (quoting *Anderson*, 477 U.S. at 252). If the evidence offered by the nonmoving party is "merely colorable," or "not significantly probative," or not enough to lead a fair-minded jury to find for the nonmoving party, the motion for summary judgment should be granted. *Anderson*, 477 U.S. at 249-52. "A genuine dispute between the parties on an issue of

material fact must exist to render summary judgment inappropriate." *Hill v. White*, 190 F.3d 427, 430 (6th Cir. 1999) (citing *Anderson*, 477 U.S. at 247-49).

## II. Plaintiff's Claims

The plaintiff brings this suit under 42 U.S.C. § 1983, alleging that the defendant's actions while she was a pretrial detainee at the DCCJC violated her rights under the Fourteenth Amendment. (Docket No. 1 at 1; Docket No. 11 at 2; Docket No. 22 at 3.) Specifically, the plaintiff alleges that the takedown maneuver employed by the defendant constituted excessive force in violation of her Fourteenth Amendment rights. The plaintiff also alleges a common law battery claim against the defendant pursuant to the Tennessee Government Tort Liability Act, Tenn. Code Ann. § 29-20-101, *et seq*.

### A. Fourteenth Amendment Claim

The defendant asserts that he did not use excessive force, and that, even if there is a fact question as to whether the force was excessive, he is entitled to qualified immunity. (Docket No. 11.)

In this case, Griffin was a pretrial detainee. A pretrial detainee is a person who has been charged with a crime but who has not yet been tried on the charge, and who is legitimately incarcerated prior to the determination of guilt or innocence. *Bell v. Wolfish*, 441 U.S. 520, 523 (1979). Griffin had been arrested and incarcerated, but she had not been convicted of a crime at the time of the incident. (*See* Docket No. 11 Ex. 2 at 10-11.) Pretrial detainees retain at least the same constitutional rights as enjoyed by convicted

prisoners. *Bell*, 441 U.S. at 545. A pretrial detainee's constitutional protections derive from the Fourteenth Amendment's Due Process Clause. *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). The Due Process Clause affords pretrial detainees, like the plaintiff, protection from "conditions [that] amount to punishment." *Bell*, 441 U.S. at 535. The Sixth Circuit has stated that a pretrial detainee "is entitled to the same protection under the Eighth Amendment by way of the Fourteenth Amendment's Due Process Clause." *Watkins v. Evans*, Nos. 95-4162, 95-4341, 1996 WL 499094, at *2 (6th Cir. Sept. 3, 1996) (unpublished opinion) (citing *Whitley v. Albers*, 475 U.S. 312, 327 (1986)).

The Eighth Amendment "forbids the infliction of 'cruel and unusual punishments.'" *Spencer v. Bouchard*, 449 F.3d 721, 727 (6th Cir. 2006) (quoting U.S. Const. amend. VIII). The test under the Eighth Amendment's cruel and unusual punishment clause is whether the defendant caused the "unnecessary and wanton infliction of pain." *Watkins*, 1996 WL 499094, at *2 (citing *Whitley*, 475 U.S. at 319; *Moore v. Holbrook*, 2 F.3d 697, 700 (6th Cir. 1993)). The Supreme Court has held that "unnecessary and wanton" inflictions of pain are those "totally without penological justification." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981); *see also Hope v. Pelzer*, 536 U.S. 730, 737 (2002).

In determining whether a defendant caused "unnecessary and wanton infliction of pain," the court must "determine whether the force was applied in a good-faith effort to maintain or restore discipline, or 'maliciously and sadistically' to cause harm." *Watkins*, 1996 WL 499094, at *2 (citing *Hudson v. McMillian*,

503 U.S. 1, 7 (1992)). This test consists of both an objective and a subjective component. *Id.* (citing *Farmer v. Brennan*, 114 S.Ct. 1970, 1977 (1994)). The objective component requires that the pain be serious, while the subjective component requires that the conduct be wanton. *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 297-300 (1991); *Moore*, 2 F.3d at 700). Here, the objective component of the "unnecessary and wanton" test is not in dispute. Hardrick has conceded that Griffin "suffered a serious injury following the takedown maneuver." (Docket No. 13 at 5.)

The remaining issue concerns the subjective component of the test; that is, whether Hardrick employed the takedown procedure wantonly. *See Watkins*, 1996 WL 499094, at *2. In determining whether the force was applied wantonly, the court should consider factors such as the perceived necessity for the application of force and the proportion between the amount of force used and the necessity for the force. *Whitley*, 475 U.S. at 321. This standard does not ask whether, in hindsight, the use of force was absolutely necessary. *Id.* Rather, the key issue is "whether the use of force could plausibly have been *thought* necessary, or instead, [whether it] evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Id.* (emphasis added).

The court finds that a reasonable jury could not conclude that Hardrick acted in a sufficiently wanton manner. While Hardrick does not deny that he made threatening comments toward Griffin, the video does not portray the discussion between Hardrick and Griffin as hostile. Instead, Hardrick appears calm and non-aggressive, and it is Griffin who acts belligerently

toward Hardrick. In fact, Hardrick never infringed on Griffin's space, touched, or grabbed her until she attempted to walk away from him. While the court does not agree with the defendant's contention that such threats are irrelevant (Docket No. 29 ¶ 1), as they could indicate a "sadistic" or "malicious" state of mind at the time of the physical encounter, the marked calmness of the defendant's demeanor portrayed in the video indicates that the court should not afford significant weight to the plaintiff's unrebutted allegations that such threats were made.

As to the actual takedown maneuver itself, the evidence establishes that, when Hardrick tripped the plaintiff, he did so in a "good faith effort to restore discipline" and that "the use of force could plausibly have been thought necessary." *See Watkins*, 1996 WL 499094, at *2; *Whitley*, 475 U.S. at 321. To review, the video establishes that Griffin was acting defiantly toward Hardrick and Rutledge during the incident. She had created a disturbance outside of the nurses' station, argued with Hardrick, and attempted to walk away from Hardrick. After Hardrick restrained her by holding onto her right arm, she tried to push away from him using her left arm until Rutledge was able to take control of that arm. Even then, with an officer holding each arm, Griffin continued to jerk her arms, act defiantly, and attempt to walk away.

Hardrick accurately testified in his deposition that, at this moment, Griffin was "struggling" with the officers, as the video clearly reveals. (Docket No. 11 Ex. 5 at 15:09:15-15:09:20; Docket No. 28 at 5.) He perceived Griffin as "noncompliant . . . actively

aggressive and combative."[4] (Docket No. 28 at 5.) Hardrick believed that it was "necessary to conduct a leg sweep [tripping maneuver]" on Griffin in order to put her in a "felony prone position" (face forward on the ground) so that she could not use her legs or arms to continue to resist. (*Id.*; *See* Docket No. 11 Ex. 4 at 5.)

No reasonable jury could conclude that, at the time Hardrick tripped Griffin, he was acting wantonly. Rather, the evidence establishes that Hardrick "plausibly thought" that a takedown was necessary to bring Griffin under control and that, as such, a jury could only conclude that Hardrick acted in "good faith to restore order" at the time he tripped Griffin. Because no reasonable jury could conclude that Hardrick acted wantonly in violation of Griffin's Fourteenth Amendment rights, a discussion of qualified immunity is unnecessary.

**B. Plaintiff's State Law Claim**

The plaintiff alleges a common law battery claim against the defendant pursuant to the Tennessee Government Tort Liability Act (GTLA), Tenn. Code Ann. § 29-20-101, *et seq*. (Docket No. 1 at 1; Docket No. 22 at 6.) The defendant has moved for summary judgment on this claim, asserting that he did not

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[4] The plaintiff contends that there is no evidence that, while the officers had control of Griffin's arms, there were orders given to her that she did not obey. (Docket No. 22 at 2 n.1.) While the court agrees that there is no evidence as to what precisely the officers were saying or ordering at that moment, it is clear that Griffin was trying forcefully to get away from the officers and was out of control.

commit a battery on the plaintiff as a matter of law. (Docket No. 11 at 2.)

Under the GTLA, individual governmental employees may be sued for their intentional torts. *Evans v. City of Etowah*, No. 1:06-cv-252, 2008 U.S. Dist. LEXIS 27275, at *33 (E.D. Tenn. Apr. 2, 2008) (citing *Baines v. Wilson County*, 86 S.W.3d 575, 583 n.5 (Tenn. Ct. App. 2002)). Under Tennessee law, a cause of action for battery against a police officer requires a showing that the officer has caused damage by an excessive and unprovoked use of force. *Butler v. City of Englewood*, No. 1:07-cv-184, 2008 U.S. Dist. LEXIS 82004, at *37 (E.D. Tenn. Aug. 25, 2008) (citing *City of Mason v. Banks*, 581 S.W.2d 621, 626 (Tenn. 1979)). Where a plaintiff asserts a common law battery claim based on the same use of force as a corresponding Section 1983 claim, the court's "analysis regarding [a] Plaintiff's [Section] 1983 excessive force claim applies equally to her Tennessee state law claims for . . . battery." *Id.* at *38. As was set forth in the previous discussion, the defendant is entitled to summary judgment on the Section 1983 claim because no reasonable jury could conclude that he acted wantonly toward the plaintiff when he tripped her, thus establishing that he did not use excessive force. Therefore, summary judgment is equally appropriate on the battery claim.

## CONCLUSION

For the reasons discussed herein, the defendant's motion for summary judgment will be granted.

An appropriate order will enter.

/s/ALETA A. TRAUGER
ALETA A. TRAUGER
United States District Judge

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF TENNESSEE**
**NASHVILLE DIVISION**

**Case No.: 3:08-CV-828**

**[Filed June 3, 2009]**

| | |
|---|---|
| TRUDY GRIFFIN, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| DARRELL HARDRICK, | ) |
| | ) |
| Defendant. | ) |
| | ) |

Judge Trauger

**ORDER**

For the reasons expressed in the accompanying Memorandum, the defendant's Motion for Summary Judgment (Docket No. 11) is **GRANTED.** This case is dismissed.

It is so ordered.

Entered this 3rd day of June 2009.

/s/ALETA A. TRAUGER
ALETA A. TRAUGER
United States District Judge

## APPENDIX C

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

**No. 09-5757**

**[Filed June 16, 2010]**

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|---|---|
| TRUDY GRIFFIN, | ) |
| | ) |
| Plaintiff-Appellant, | ) |
| | ) |
| v. | ) |
| | ) |
| DARRELL HARDRICK, | ) |
| | ) |
| Defendant-Appellee. | ) |
| | ) |

### ORDER

**BEFORE:** COLE, GILMAN, and WHITE, Circuit Judges.

The court having received a petition for rehearing en banc, which was circulated to all active judges of this court, none of whom requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied. Judge White would grant rehearing for the reasons stated in her dissent.

**ENTERED BY ORDER OF THE COURT**
**/s/Leonard Green**
**Leonard Green, Clerk**